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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,950	02/19/2004	Andrew C. Hiatt	EPI3009 (068904-0507)	4806
30542	7590	09/12/2007	EXAMINER	
FOLEY & LARDNER LLP			WESSENDORF, TERESA D	
P.O. BOX 80278			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92138-0278			1639	
			MAIL DATE	DELIVERY MODE
			09/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Communication Re: Appeal**

Application No.

10/783,950

Examiner

T. D. Wessendorf

Applicant(s)

HIATT ET AL.

Art Unit

1639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 05 March 2007 is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
- (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).**

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☒ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired. *See APPROP 1205.*
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
- (d) ☐ other: \_\_\_\_\_.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

*T.D. Wessendorf*  
**T.D. WESSENDORF**  
**PRIMARY EXAMINER**

*9/12/07*